

CHAPTER 486E FUEL DISTRIBUTION

REPEALED. L 1997, c 257, §4.

CHAPTER 486H GASOLINE DEALERS

SECTION

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- 486H-3 NOTICE OF TERMINATION, CANCELLATION, OR NONRENEWAL
- 486H-10 REPEALED
- 486H-10.4 RESTRICTIONS ON MANUFACTURERS OR JOBBERS IN OPERATING SERVICE STATIONS; LEASE RENT CONTROLS; DEFINITIONS
- 486H-10.5 VIOLATION; PENALTIES
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Cross References

Environmental response tax, see §243-3.5.

§486H-1 Definitions. *[Amendment effective July 1, 2004. For present provision, see main volume.]* As used in this chapter:

“Commission” means the public utilities commission.

“Company retail station” means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that manufacturer or jobber.

“Dealer retail station” means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer other than a manufacturer or a jobber under a franchise.

“Independent retail station” means a retail service station not owned by a manufacturer or jobber and operated by a qualified gasoline dealer.

“Non-refiner marketer” means any person who acquires gasoline for sale in the State of Hawaii, and who is not a refiner located and operating in the State of Hawaii, nor an importer owned by or affiliated with, directly or indirectly, by a refiner located and operating in the State of Hawaii.

“Operate” means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.

“Other areas” means the second congressional district of the State.

“Pre-tax” when used in reference to a price means such price net of the fuel-related or other taxes assessed when the gasoline is sold.

“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.

“Retail station” means and includes a company retail station, a dealer retail station, and an independent retail station.

“Self-serve basis” means that the retail station allows customers to dispense gasoline into vehicles.

“Urban” means the first congressional district of the State. [am L 2002, c 77, §2(2)]

Revision Note

Only the definitions added are compiled in this Supplement.

§486H-3 Notice of termination, cancellation, or nonrenewal. AMENDED. “Division of measurement standards” changed to “measurement standards branch”. L 1998, c 192, §5.

§486H-10 REPEALED. L 1997, c 257, §6.

[§486H-10.4] Restrictions on manufacturers or jobbers in operating service stations; lease rent controls; definitions. [Section effective until June 30, 2004. For section effective July 1, 2004, see below.] (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer operated retail service station to a company operated retail service station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company operated retail service stations legally in existence on July 31, 1997;
- (2) Constructing and operating any new retail service stations as company operated retail service stations constructed after August 1, 1997, subject to subsection (b); or

486H-10.4 TRADE REGULATION AND PRACTICE

- (3) Operating a former dealer operated retail service station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the service station, cancels the franchise, or is properly terminated or not renewed.

(b) No new company operated retail service station shall be located within one-eighth mile of a dealer operated retail service station in an urban area, and within one-quarter mile in other areas. For purposes of this subsection, "urban" means the first congressional district of the State, and "other areas" means the second congressional district of the State.

(c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:

- (1) Such renewal shall not be scheduled more frequently than once every three years; and
- (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer operated retail service station as defined in section 486H-1 and 486H-10.4 plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase which the manufacturer or jobber is required to pay the lessor under the ground lease for the service station. For the purposes of this subsection, "gross amount" means all monetary earnings of the dealer from a dealer operated retail service station after all applicable taxes, excluding income taxes, are paid.

The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.

(d) Nothing in this section shall prohibit a dealer from selling a retail service station in any manner.

(e) For the purposes of this section:

"Company operated retail service station" means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that manufacturer or jobber.

"Dealer operated retail service station" means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer under a franchise.

"Operate" means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.

"Retail" means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment. [L 1997, c 257, §3]

§486H-10.4 Restrictions on manufacturers or jobbers in operating service stations; lease rent controls; definitions. *[Section effective July 1, 2004. For section effective until June 30, 2004, see above.]* (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer retail station to a company retail station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company operated retail service stations legally in existence on July 31, 1997;

- (2) Constructing and operating any new retail service stations as company retail stations constructed after August 1, 1997, subject to subsection (b); or
 - (3) Operating a former dealer retail station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the service station, cancels the franchise, or is properly terminated or not renewed.
 - (b) No new company retail station shall be located within one-eighth mile of a dealer retail station in an urban area, and within one-quarter mile in other areas.
 - (c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:
 - (1) Such renewal shall not be scheduled more frequently than once every three years; and
 - (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer operated retail service station as defined in section 486H-1 and 486H-10.4 plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase which the manufacturer or jobber is required to pay the lessor under the ground lease for the service station. For the purposes of this subsection, "gross amount" means all monetary earnings of the dealer from a dealer operated retail service station after all applicable taxes, excluding income taxes, are paid.
- The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.
- (d) Nothing in this section shall prohibit a dealer from selling a retail service station in any manner. [L 1997, c 257, §3; am L 2002, c 77, §2(3)]

Case Notes

Where plaintiff argued that §3(c) of Act 257, [L 1997, (§486H-10.4(c))] ("Act 257") effected a regulatory taking because it failed to substantially advance a legitimate state interest, district court erred in granting summary judgment because resolution of factual issues was necessary to determine whether Act 257 substantially advanced, or bore a reasonable relationship to, State's interest in lowering gasoline prices; summary judgment inappropriate on other two grounds urged by plaintiff. 224 F.3d 1030.

[§486H-10.5] Violation; penalties. Any person who violates section 486H-10 shall be assessed a civil penalty of \$1,000 per day for each violation. [L 1995, c 238, §1]

Note

Section 486H-10 referred to in text is repealed.

[§486H-13] Maximum pre-tax wholesale price for the sale of gasoline; civil actions. *[Section effective July 1, 2004.]* (a) Notwithstanding any law to the contrary, no manufacturer, wholesaler, or jobber may sell regular unleaded gasoline to a dealer retail station, an independent retail station, or to another jobber or wholesaler at a price above the maximum pre-tax wholesale prices established pursuant to subsection (b). The commission shall publish the maximum pre-tax wholesale prices by means that shall include the Internet website for the State of Hawaii.

(b) On a weekly basis, the commission shall determine the maximum pre-tax wholesale price of regular unleaded gasoline for each island as follows:

- (1) For the island of Oahu, the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the baseline price for regular unleaded gasoline, plus the location adjustment factor, and the marketing margin factor; and
- (2) For the islands of Kauai, Molokai, Lanai, Maui, and Hawaii, the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the maximum pre-tax wholesale price of regular unleaded gasoline for Oahu, plus the neighbor island wholesale adjustment factor.
- (c) The baseline price for regular unleaded gasoline for Oahu referred to in subsection (b) shall be determined on a weekly basis, and shall be equal to the average of:
 - (1) The spot pipeline daily price for regular unleaded gasoline for Los Angeles;
 - (2) The spot pipeline daily price for regular unleaded gasoline for San Francisco; and
 - (3) The spot daily price for the Pacific Northwest,as reported and published by the Oil Price Information Service for the five business days of the preceding week.
- (d) The location adjustment factor referred to in subsection (b) shall be \$.04 per gallon for the first year after July 1, 2004, and shall thereafter be subject to annual adjustment pursuant to section 486H-16(a).
- (e) The marketing margin factor referred to in subsection (b) shall be \$.18 per gallon for the first year after July 1, 2004, and shall thereafter be subject to annual adjustment pursuant to section 486H-16(a).
- (f) The neighbor island wholesale adjustment factor shall be the sum of the neighbor island location adjustment factor, plus the neighbor island marketing factor.
- (g) The neighbor island location adjustment factor shall be \$.04 per gallon for the first year after July 1, 2004, and shall thereafter be subject to annual adjustment pursuant to section 486H-16(a).
- (h) The neighbor island marketing factor shall be \$.04 per gallon for the first year after July 1, 2004, and shall thereafter be subject to annual adjustment pursuant to section 486H-16(a).
- (i) Any manufacturer, wholesaler, or jobber who knowingly violates any requirement imposed or rule adopted under this section shall be subject to a civil penalty for each such violation, which penalty shall be three times the overcharge, or \$250,000, whichever is greater, and shall be liable for the costs of the action, and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and attorney's fees. In the case of ongoing violation, the two-year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it deems appropriate. As used in this subsection, "overcharge" means the number of gallons of gasoline sold, times the wholesale price at which the manufacturer or jobber sold regular unleaded gasoline to a dealer retail station, less taxes assessed, less the maximum pre-tax wholesale price established pursuant to subsection (b).
- (j) The commission shall have the power to determine the extent to which a manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted under this section, including the power to compel a manufacturer, [wholesaler,] or jobber to submit documents, data and information necessary and appropriate for the commission to determine such compliance. The commission may

use data collected by the department of business, economic development, and tourism pursuant to chapter 486J, as well as obtain the assistance of that department in determining such compliance.

(k) The commission shall adopt rules pursuant to chapter 91 as may be necessary to implement this section. [L 2002, c 77, pt of §2(1)]

Revision Note

“July 1, 2004” substituted for “the effective date of this section”.

[§486H-14] Maximum pre-tax retail price for gasoline sold on a self-serve basis; civil actions. *[Section effective July 1, 2004.]* (a) Notwithstanding any law to the contrary, no retail station may sell regular unleaded gasoline at retail, on a self-serve basis, at a price above the maximum pre-tax retail prices established pursuant to subsection (b). The commission shall publish the maximum pre-tax retail prices by means that shall include the Internet website for the State of Hawaii. The commission may also publish the retail prices inclusive of all taxes.

(b) On a weekly basis, the commission shall determine the maximum pre-tax retail price of gasoline. The maximum pre-tax retail price for regular unleaded gasoline shall consist of the maximum pre-tax wholesale price for regular unleaded gasoline established pursuant to section 486H-13(b), plus a retail marketing margin factor.

(c) The retail marketing margin factor shall be \$.16 per gallon for the first year, and shall thereafter be subject to adjustment pursuant to section 486H-16(b).

(d) Any retail station that knowingly violates any requirement imposed or rule adopted under this section shall be subject to a civil penalty equal to three times the amount of the overcharge or \$25,000, whichever is greater, and shall be liable for the costs of the action, and reasonable attorney’s fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and the attorney’s fees. In the case of ongoing violation, the two-year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it deems appropriate. As used in this subsection, “overcharge” means the number of gallons of gasoline sold, times the retail price at which the retail station sold regular unleaded gasoline, less taxes assessed, less the maximum pre-tax retail price established pursuant to subsection (b).

(e) The commission shall have the power to determine the extent to which a retail station is complying with any requirement imposed or rule adopted under this section, including the power to compel a retail station to submit documents, data, and information necessary and appropriate for the commission to determine such compliance. The commission may use data collected by the department of business, economic development, and tourism pursuant to chapter 486J, as well as obtain the assistance of such department in determining such compliance.

(f) The commission shall adopt rules pursuant to chapter 91 as may be necessary to implement this section. [L 2002, c 77, pt of §2(1)]

[§486H-15] Governor’s emergency powers. *[Section effective July 1, 2004.]* (a) Notwithstanding any law to the contrary, the governor may suspend in whole or in part, section 486H-13, section 486H-14, or any rule adopted pursuant to those sections whenever the governor issues a written determination that strict compliance with any section or a rule will cause a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii. The

governor shall publish this determination in accordance with section 1-28.5. The suspension shall take effect upon issuance of the written determination by the governor.

(b) Except as provided in subsection (c), the suspension under subsection (a) shall remain in effect until the earlier of:

- (1) The adjournment of the next regular or special session of the legislature; or
- (2) The effective date of any legislative enactment intended to address the major adverse impact;

provided that if the legislature has enacted legislation to address the major adverse impact, and the governor vetoes the legislation, the suspension shall terminate on the date of that veto, and the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after the date of the veto; and provided further that if no action is taken by the legislature during the regular or special session to address the major adverse impact, then the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after adjournment sine die of the regular or special session.

(c) If the written determination is issued while the legislature is in session, the suspension under subsection (a) shall remain in effect until the earlier of:

- (1) The adjournment of that session of the legislature; or
- (2) The effective date of any legislative enactment intended to address the major adverse impact;

provided that if the legislature has enacted legislation to address the major adverse impact, and the governor vetoes the legislation, the suspension shall terminate on the date of that veto, and the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after the date of the veto; and provided further that if no action is taken by the legislature during the regular or special session to address the major adverse impact, then the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after adjournment sine die of the regular or special session. [L 2002, c 77, pt of §2(1)]

[§486H-16] Adjustments. *[Section effective July 1, 2004.]* (a) A manufacturer, wholesaler, or jobber may petition the commission to adjust the maximum pre-tax wholesale price of regular unleaded gasoline in the event of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, or the neighbor island wholesale adjustment factor. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustments shall be determined as follows:

- (1) The value of the baseline price shall be equal to the average of:
 - (A) The spot pipeline daily price for regular unleaded gasoline for Los Angeles;
 - (B) The spot pipeline daily price for regular unleaded gasoline for San Francisco; and
 - (C) The spot daily price for the Pacific Northwest, as reported and published by the Oil Price Information Service for the five business days of the preceding week;

- (2) The value of the location adjustment factor in effect at the time the petition is filed shall be adjusted to equal the average of the actual acquisition cost to non-refiner marketers to obtain gasoline from refiners or importers for sale on the island of Oahu over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agreements, or other similar agreements; provided that the location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Oahu. As used in this paragraph, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pays to a third party for delivery of such gasoline into a terminal located on the island of Oahu;
- (3) The value of the marketing margin factor in effect at the time the petition is filed shall be adjusted by adding to such value the difference between:
 - (A) The average of the difference over the prior twelve-month period between:
 - (i) The dealer tank wagon price for sales for resale; and
 - (ii) The bulk price for sales for resale, for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information; less
 - (B) The average of the difference over the period from 1994 until the most current year between:
 - (i) The dealer tank wagon price for sales for resale; and
 - (ii) The bulk price for sales for resale, for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information;
- (4) The value of the neighbor island location adjustment factor in effect at the time the petition is filed shall be adjusted to equal the actual acquisition cost to non-refiner marketers to obtain gasoline from a refiner or importer for sale on the island of Kauai, Molokai, Lanai, Maui, or Hawaii, over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agreements, or other similar agreements; provided that the neighbor island location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Kauai, Molokai, Lanai, Maui, or Hawaii, from any port on the island of Oahu. As used in this subsection, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pay to a third party for delivery of such gasoline into a terminal located on Kauai, Molokai, Lanai, Maui, or Hawaii; and
- (5) The value of the neighbor island marketing factor in effect at the time the petition is filed shall be adjusted if there are material changes in the cost factors associated with marketing gasoline on the island of Kauai, Molokai, Lanai, Maui, or Hawaii, such as terminaling, storage, or distribution costs.

(b) A retail station may petition the commission to adjust the maximum pre-tax retail price of gasoline in the event of a change in the maximum pre-tax wholesale price for regular unleaded gasoline, or the value of the retail marketing margin factor. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustment shall be determined as follows:

(1) The value of the retail marketing margin factor for regular unleaded gasoline established in section 486H-14(c) shall be adjusted upward only if such value is less than the average of the difference over the prior twelve-month period between:

(A) The “through retail outlets” price for sales to end users for regular unleaded gasoline; and

(B) The dealer tank wagon price, for sales for resale for regular unleaded gasoline, for Petroleum Administration for Defense (PAD) District V,

as reported and published by the Energy Information Administration or its successor in Table 31 - “Motor Gasoline Prices by Grade, Sales Type, PAD District, and State” or other source containing the same information.

(c) If the commission adjusts the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline, the commission shall publish its findings and the adjusted prices by means that shall include the Internet website for the State of Hawaii.

(d) In its discretion and without a petition having been filed, the commission may adjust the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline if an adjustment is necessary as a result of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, the neighbor island wholesale adjustment factor, or the retail marketing margin factor.

(e) Nothing in section 486H-13 or 486H-14 shall be construed to prohibit the filing of a petition during the first year after July 1, 2004. [L 2002, c 77, pt of §2(1)]

Note

Gasoline price cap report, etc. (2003). L 2002, c 77, §5.

Revision Note

“July 1, 2004” substituted for “the effective date of this section”.

CHAPTER 486I PETROLEUM INDUSTRY INFORMATION REPORTING

REPEALED. L 1997, c 257, §5.

[CHAPTER 486J] PETROLEUM INDUSTRY INFORMATION REPORTING ACT

PART I. GENERALLY

SECTION

486J-1 DEFINITIONS

486J-2 DISTRIBUTORS TO REGISTER

486J-3 STATEMENTS

486J-4 INFORMATIONAL REPORTS